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CASE SUMMARY: NOVA SCOTIA COURT OF APPEAL UPHOLDS FINDING THAT "RECKLESS" PRE-CONTRACTUAL MISREPRESENTATIONS MADE BY INSURED ARE NOT EXCUSED BY THE ERRORS AND OMISSIONS ENDORSEMENT; REVERSES FINDING OF LIABILITY AGAINST BROKER ON BASIS THAT TRIAL JUDGE ERRED IN FORMULATING STANDARD OF CARE

An errors and omissions endorsement does not relieve an insured of material misrepresentations made at the time of application for insurance.

Fire insurance; Coverage; Interpretation of policy; Misrepresentation in obtaining insurance; Agents and brokers; Duties and liabilities of agent

Grafton Connor Property Inc. (c.o.b. Grafton-Connor Group) v. Lloyd's of London Underwriters, [2017] N.S.J. No. 235, 2017 NSCA 54, Nova Scotia Court of Appeal, June 15, 2017, D.P.S. Farrar, C.A. Bourgeois and E. Van den Eynden JJ.A.

The insured's business was destroyed by fire on March 7, 2007. In its application for insurance, the insured represented that the building was of masonry construction and sprinklered, neither of which was true. As a result of the misrepresentations, the insurer voided the policy and denied coverage. The insured sued the insurer for coverage and its broker for negligence. The insured's claim against the insurer was dismissed at trial but the insured succeeded, in part, against the broker which was found 50% contributorily negligent. The Court of Appeal granted the broker's appeal and dismissed the insured's appeal of its claim for coverage.

The Court of Appeal upheld the trial judge's finding that the policy's Errors and Omissions Clause did not relieve the insured of its obligation to accurately report all material matters in the application for insurance. The court concluded that the Errors and Omissions Clause does not apply to precontractual material misrepresentations made in the course of applying for insurance.

With respect to the broker's liability to the insured, the broker was entitled to rely upon the applicant's ability to represent such basic information regarding the condition of the building correctly without further information. No level of sophistication was required by the applicant for insurance to know whether the building was of masonry construction and whether it contained sprinklers. On the basis that the trial judge erred in formulating the broker's standard of care, the finding of liability against the broker was overturned.

This case was digested by Laura E. Miller and edited by Steven W. Abramson of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at lmiller@harpergrey.com or sabramson@harpergrey.com or review their biographies at http://www.harpergrey.com.